

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	
)	
Request for Guidance)	
with Respect to)	
)	
North Carolina Department of Commerce, ITS)	File No. 217270000282282
Raleigh, North Carolina)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45 ✓
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: November 19, 2001

Released: November 20, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division of the Common Carrier Bureau has under consideration a Request for Guidance from the Schools and Libraries Division of the Universal Service Administrative Company (Administrator).¹ In the Request for Guidance, the Administrator requests that the Commission waive its competitive bidding requirement with respect to an application submitted by North Carolina Department of Commerce, ITS (North Carolina), Raleigh, North Carolina, for Funding Year 3 support under the universal service support mechanism.² For the reasons discussed below, we grant the Administrator's request and direct the Administrator to take further action consistent with this Order.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from the Schools and Libraries Division, Universal Service Administrative Company, to the Federal Communications Commission, filed September 26, 2001 (Request for Guidance).

² *Id.* Under section 54.702(c) of the Commission's rules, the Administrator may seek guidance from the Commission where its rules do not address a particular situation.

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.⁵

3. On December 15, 1999, North Carolina submitted a completed FCC Form 470 for Funding Year 3.⁶ Through no fault of North Carolina, the Administrator experienced data entry problems with its information processing system was unable failed on account of system limitations to input and post Keya Paha's Funding Year 3 FCC Form 470 to its web site until January 3, 2000.⁷ Because our rules require that FCC Forms 470 must be posted on the Administrator's web site for 28 days before an applicant can enter into an agreement for eligible services, the date of this posting established an allowable contract date of January 31, 2000.

4. North Carolina contacted the Administrator concerning the posting of its FCC Form 470 and the Administrator advised North Carolina to submit its FCC Form 471 within the established filing window.⁸ The Administrator confirms that North Carolina completed its FCC Forms 471, met all filing requirements, and postmarked its FCC Form 471 within the established filing window.⁹ Because the Administrator failed to post North Carolina's FCC Form 470 in a timely manner, however, North Carolina was unable to comply with the 28-day posting requirement set forth in section 54.504(b)(4) of our rules.

5. On September 26, 2001, the Administrator filed a letter with the Commission pursuant to section 54.702(c) of the Commission's rules.¹⁰ In the letter, the Administrator related the above facts, sought guidance, and urged the Commission to grant North Carolina a waiver of the 28-day posting requirement consistent with the Commission's decision in *Runnemede Public Schools*.¹¹

6. We conclude that a waiver of section 54.504(b)(4) of the Commission's rules is warranted in this case. Generally, the Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.¹² In the case at hand, strict

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(b)(4), (c).

⁶ FCC Form 470, North Carolina Department of Commerce, ITS filed December 15, 1999.

⁷ See Request for Guidance.

⁸ *Id.*

⁹ *Id.* See also FCC Form 471, North Carolina Department of Commerce, ITS, filed January 17, 2000.

¹⁰ See Request for Guidance.

¹¹ See *id.*; *Runnemede Public Schools*, CC Docket Nos. 96-45 and 97-21, Order, DA 99-2957 (rel. December 21, 1999).

¹² 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("Waiver is [] appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest").

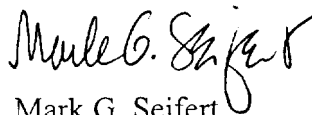
compliance with our rules is inconsistent with the public interest. We find that the failure in posting North Carolina's Funding Year 3 FCC Form 470 was solely attributable to the Administrator. It would be unfair, therefore, for North Carolina to bear the weight of the error of the Administrator, particularly when this error may have resulted in North Carolina being denied substantial support it otherwise would have received.

7. The public interest is served by the effective operation of the schools and libraries universal support service mechanism, which generally requires competitive bidding for all services eligible for support. We conclude, however, that, in these particular circumstances, the public interest weighs in favor of correcting the error committed by the Administrator so that North Carolina's application may be processed without further delay and considered on the merits. Therefore, we grant the Administrator's request and direct the Administrator to process North Carolina's Funding Year 3 FCC Form 471 consistent with this Order.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.702(c) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.702(c) that the Request for Guidance filed by the Administrator with respect to the North Carolina Department of Commerce, ITS, Raleigh, North Carolina IS GRANTED.

9. IT IS FURTHER ORDERED that SLD IS DIRECTED to take further action consistent with this Order.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau